

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Lao Buddhist Temple of Nashville/Antioch) Davidson County
Property ID: 181-00-0 142.00)
)
Claim of Exemption) Exempt No. 78315

Initial Decision and Order

Statement of the Case

This is a taxpayer appeal of the denial of an exemption application by the designee of the State Board of Equalization (“State Board”). The taxpayer applied to the State Board for exemption of the subject property on April 16, 2013. On September 5, 2013, the State Board designee denied the application. The taxpayer timely appealed.

The undersigned administrative judge conducted the hearing on April 16, 2014 in Nashville. President Manithanha Ditavog, Secretary and board member Thassany Pothikan, monk Sombath Kittsaro, and counsel R. Don O'Donniley, Esq. appeared on behalf of the taxpayer. Jason Bobo, Esq. and John Cantrell appeared on behalf of the Davidson County Property Assessor.

Findings of Fact and Conclusions of Law

The subject property is a 4.7 acre vacant parcel adjacent to an exempt parcel containing the taxpayer's temple and 4.4 acres of land. Denying the application, the designee wrote, "Property is primarily vacant and unused – any use made of subject property and does not rise to level of use required for exemption."

Article II, Section 28 of the Tennessee Constitution permits, but does not require, the legislature to exempt from taxation property which is "held and used for purposes purely

religious, charitable, scientific, literary, or educational.” Tenn. Code Ann. § 67-5-212(a)(1)

provides in pertinent part,

There shall be exempt from property taxation the real and personal property, or any part of the real or personal property, owned by any religious, charitable, scientific or nonprofit educational institution that is occupied and actually used by such institution or its officers purely and exclusively for carrying out one (1) or more of the exempt purposes for which the institution was created or exists.

State Board Rule 0600-08-.02 provides,

- (1) The purpose of this rule is to establish criteria for determining eligibility of land for religious, charitable, educational or scientific exemption from property taxes.
- (2) Land must be in actual use for exempt purposes of the exempt institution before it may qualify for exemption. Land will be presumed to be in use if
 - (a) it is land underlying exempt structures or paving;
 - (b) if the total land area claimed for exemption, including that which is underlying exempt structures, is five acres or less; or
 - (c) if the land exceeds the foregoing measures but is nevertheless necessary to meet government health, planning, or other requirements for configuration or minimum area prior to granting of any variance. In the absence of locally adopted zoning standards, resort may be had to requirements imposed for similar structures in nearby communities that impose zoning requirements or to zoning requirements recommended by a model generally accepted or used in this state. For purpose of this presumption the minimum area thus determined will be multiplied by a factor of 1.5.
- (3) The presumption in this rule is rebuttable. The assessor or taxing jurisdiction may rebut the presumption by proving that vacant land otherwise within the presumption is not being used for exempt purposes or is being offered for sale as a tract separate from the remaining land in use. The applicant for exemption may rebut the presumption by proving that vacant land which would be denied exemption under the presumption, is in fact being regularly used for exempt purposes qualifying for exemption in accordance with law.

- (4) This rule shall not operate to disqualify property previously approved for exemption if it has not been subjected to a nonexempt use since its approval.
- (5) Land held solely for future construction or other future uses does not qualify for exemption. Land that is held solely or primarily for its preservation, conservation, protection, or its scientific or ecological significance will not be eligible for exemption under T.C.A. section 67-5-212 unless and to the extent there is a clear showing of active research or other active exempt use taking place on the subject property.

As the party seeking to change the State Board designee's initial determination, the taxpayer has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

At the hearing, the taxpayer's witnesses testified regarding the use of the subject and presented a number of photographs of the subject in use. The front portion of the parcel close to the road included a wooded area and a nearby cleared area used for vehicle access, religious and temple community activities, and meditation. Towards the center of the parcel is an open area that is used four to seven times per year for festivals and parking for the same. Additionally, monks ¹ quite frequently roam this area throughout the year for meditative purposes. However, the back portion of the property is rarely used, if at all.²

The front and center portions of the subject constitute approximately 3.5 acres, and the back portion of the property is approximately 1.2 acres. Accordingly, the administrative judge finds the taxpayer has shown regular exempt use within the meaning of State Board Rule 0600-08-.02(3) to justify exemption of 3.5 acres of the subject.

¹ At any given time, from two to five monks inhabit the neighboring temple parcel.

² This portion of the property is inaccessible to vehicles, but according to the taxpayer, the monks have occasionally walked that far back into the property and meditated.

Order

It is, therefore, ORDERED that 3.5 acres of the subject shall be exempt, effective January 1, 2013. The remaining acreage shall remain taxable.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 10th day of May 2014.



Mark Aaron, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

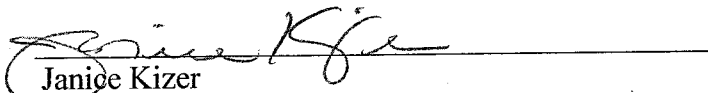
The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

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Post Office Box 196305
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This the 10th day of May 2014.



Janice Kizer
Department of State
Administrative Procedures Division